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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,371	09/11/2006	Frank Ragen	P00251US1	7966
21805	7590	03/16/2009		
JAMES C WESEMAN LAW OFFICES OF JAMES C WESEMAN 401 WEST A STREET SUITE 1600 SAN DIEGO, CA 92101			EXAMINER CONLEY, FREDRICK C	
			ART UNIT 3673	PAPER NUMBER
			MAIL DATE 03/16/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,371

Applicant(s)

RAGEN, FRANK

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Applicant should amend the claims to read hook and loop. In Addition, the Applicant should amend the specification so that VELCRO is in all caps (VELCRO) followed by (TM) and accompanied by generic term (hook and loop).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11, 13-18, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,862,535 to Roberts.

Claim 1, Roberts discloses a baby support comprising:

(a) a wrap member 200 sized to substantially encapsulate the baby, said wrap member comprising means 114 for receiving a support pad and positioning said support pad so as to support at least the head, neck and upper back of the baby; and

(b) security means (220,222) for securing said baby to said wrap member comprising at least one security panel attached to said wrap member which releasably secures the baby in a pre-selected position on the wrap member.

Claim 2, Roberts discloses the baby support of Claim 1, wherein said security means comprises a plurality of panels.

Claim 3, Roberts discloses the baby support of Claim 2, wherein at least two of the panels comprise means for releasably attaching said panels together for securing the baby in position on the wrap member.

Claim 4, Roberts discloses the baby support of Claim 1, wherein the means for receiving a support pad comprises a piece of material secured to the wrap member about the periphery of the material so as to form a pouch configured to receive the support pad therein, and thereby maintain the support pad in a desired position with respect to the wrap member (fig. 4).

Claim 5, Roberts discloses the baby support of Claim 1, wherein the means for receiving a support pad comprises a cover panel for receiving the support pad, the cover panel releasably attached to the wrap member and thereby maintain the support pad in a desired position with respect to the wrap member.

Claim 6, Roberts discloses the baby support of Claim 1, wherein the wrap member further comprises means for releasably securing the wrap member about the baby when the baby is encapsulated in the wrap member.

Claim 7, Roberts discloses the baby support of Claim 1 further comprising at least one support pad.

Claim 8, Roberts discloses the baby support of claim 7, wherein the support pad is sized to support at least the head, neck and upper back regions of the baby.

Claim 9, Roberts discloses the baby support of claim 8, wherein the support pad is sized to support at least the head, neck and torso regions of the baby.

Claim 11, Roberts discloses the baby support of claim 7, wherein the support pad is sufficiently resilient so as to generally conform to the adjacent contour of the baby when the wrap member is secured around the baby (col. 6 lines 4-16).

Claim 13, Roberts discloses the baby support comprising: a wrap member defined by a sling 200 sized to substantially encapsulate the torso of a baby; a pouch defined by an inner shell 112 attached to the wrap member; a support pad defined by fill material 122 capable of sliding into the pouch (col. 4 lines 27-30) when wherein the support pad is capable of providing support to at least the head, neck and upper back of the baby.

Claim 14, Roberts discloses the baby support of claim 13, wherein the pouch is attached to the wrap member by at least one of hook and loop fasteners or snaps.

Claim 15, Roberts discloses the baby support of claim 13, further comprising: an opening on the wrap member large enough to allow the support pad to be slid into the pouch (col. 3 lines 53-57); and a flap (21,22) attached to the wrap member adjacent to the opening.

Claim 16, Roberts discloses the baby support of claim 13, further comprising: at least one security panel defined by fastener strips (220,222) attached to the wrap member adapted to releasably secure the baby on the wrap member.

Claim 17, Roberts discloses the baby support of claim 16 wherein the support pad is sufficiently resilient to conform partially to the baby when the baby is secured on the wrap member by the at least one security panel.

Claim 18, Roberts discloses the baby support of claim 13 wherein the support pad is capable of providing support for at least the head, neck and upper back of the baby during the operations of holding. With regards to the Applicant's citation "the operation of carrying and transferring between two people", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 19, Roberts discloses the baby support of claim 13, further comprising a water resistant separate cover 114 into which the support pad is enclosed.

Claim 20, Roberts discloses the baby support comprising: a wrap member defined by sling 200; a pouch defined by cover 114 attached to the wrap member;

a support pad defined by fill material within the pouch wherein the support pad provides support to at least the head, neck, and upper back of the baby during the operations of holding; and at least one security panel defined by fastening strips (220,222) attached to the wrap member for releasably securing the baby on the wrap member. With regards to the Applicant's citation "the operation of carrying and transferring between two people", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the

prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,862,535 to Roberts.

Claim 10, Roberts discloses the baby support of claim 8, but fails to disclose the support pad having wider and narrow portions. It is considered an obvious modification to alter the shape of a structural component and it would have been obvious to have the support pad being wider across a portion and a portion being narrower in order to provide an alternative design.

Claim 12, Roberts discloses the baby support, but fails to disclose the resilient support pad being constructed from a foam material. It is considered an obvious modification to merely select from a plethora of known material and it would have been obvious to employ foam in order to provide a suitable and alternative material for the filler.

Response to Arguments

Applicant's arguments filed 12/23/08 have been fully considered but they are not persuasive. With regards to the Applicant's recitation "to substantially encapsulate", claims are given the broadest reasonable interpretation consistent with the specification and limitations in the specification are not read into the claims. Therefore, the words of a claim are generally given their ordinary and customary meaning. Encapsulate is customarily defined by Merriam Webster as to enclose in. The sling of Roberts is clearly capable of substantially enclosing the torso of the infant, and the Examiner reads the enclosing sling on the torso of the infant on the Applicant's broad limitation. It appears that the Applicant relies on broad structural language that fails to clearly distinguish the present invention over the prior art of record and does not preclude the Examiner from interpreting the claims as stated above.

The Applicant mischaracterizes the rejection as stated above, the Examiner does not state that the wrap member is 114 as alleged the support pad is considered the filler material 122. As clearly illustrated in figure 1 the device of Roberts supports the entire body and thus is capable of supporting the head, neck, and upper back of the baby. Furthermore, the recitation of "supporting at least the head, neck, and upper back of the baby" and "during the operation of holding, carrying or transferring a baby", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the

claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As stated above, the security panel is defined by fastener strips (220,222) attached to the wrap member and are adapted to releasably secure the baby on the wrap member.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is (571)272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PETER CUOMO can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/FREDRICK C CONLEY/
Primary Examiner, Art Unit 3673